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EXAMINER

AFTERGUT, JEFF H

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1733

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/082,635
Filing Date: February 25, 2002
Appellant(s): KANNANKERIL ET AL.

MAILED

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Rupert B. Hurley, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 13, 2005.

(1) Real Party in Interest

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A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is substantially correct. The changes are as follows: The reference to Pharo has been removed from the prior art rejections. The rejections presented by appellant are correct with this exception and are as follows:

Whether claims 12-15, 21-26, 30 and 31 are obvious under 35 USC 103(a) over Ottaviano in view of either one of Fox or Kawakami further in view of Lewicki et al and further in view of Japanese Patent 10-151627, E.P. 483,665 or Clements.

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Whether claims 16-18 are obvious under 35 USC 103(a) over Ottaviano in view of either one of Fox or Kawakami further in view of Lewicki et al and further in view of Japanese Patent 10-151627, E.P. 483,665 or Clements and Chavannes '387.

Whether claims 19, 20, and 29 are obvious under 35 USC 103(a) over Ottaviano in view of either one of Fox or Kawakami further in view of Lewicki et al and further in view of Japanese Patent 10-151627, E.P. 483,665 or Clements and further taken with any one of Matarasso, Deluca et al, Simhaee, or Larson '306.

Whether claims 27 and 28 are obvious under 35 USC 103(a) over Ottaviano in view of either one of Fox or Kawakami further in view of Lewicki et al and further in view of Japanese Patent 10-151627, E.P. 483,665 or Clements further taken with any one of Ramirez, Ramesh or Bekele.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon**(A) Listing of Evidence Relied upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

4,314,865	Ottaviano	2-1982
5,116,444	Fox	5-1992
3,954,368	Kawakami	5-1976
4,076,872	Lewicki et al	2-1978

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10-151,627	Kamo (Japanese)	6-1998
483,665	Deiringer (Europe)	5-1992
5,503,790	Clements	4-1996
3,294,387	Chavannes	12-1955
2002/0094393	Matarasso	7-2002
6,410,119	De Luca et al	6-2002
6,423,166	Simhaee	7-2002
4,096,306	Larson	6-1978
6,214,392	Ramirez	4-2001
5,843,502	Ramesh	12-1998
5,482,770	Bekele	1-1996

Please note that enclosed herewith are copies of a machine translation of Japanese Patent 10-151,627 and a US Patent 5225130 which is in English and is from the same patent family as E.P. 483,665.

(B) Brief Description of Evidence Relied Upon

Ottaviano suggested that it was known at the time the invention was made to provide a multilayer film in the formation of an inflated packaging product wherein the multilayer film included exterior layers of polyethylene and an interior layer of nylon which acted as an oxygen barrier wherein the multilayer film was formed via a coextrusion operation. The film was embossed and laminated in the manufacture of the packaging material (bubble wrap). The reference failed to teach the use of recycled polyester for an oxygen barrier layer.

Either one of **Fox** or **Kawakami** suggested in the manufacture of an inflatable packaging material like a bubble wrap material that it was known to employ extruders in line with the embossing operation to form a bubble wrap material (rather than employing a stock of film material to make the bubble wrap).

The reference to **Lewicki et al** expressed that those skilled in the art would have known that either polyester or nylon would have been suitable plastic material selected for their air permeability, abrasion resistance, and wear resistance in the manufacture of an inflatable cellular packaging material.

The references to any one of **Japanese Patent 10-151,627**, **E.P. 483,665**, or **Clements** suggested that it was known at the time the invention was made to blend recycled polyester with virgin polyester to make a polyester film material via extrusion (in some instances the film was even subjected to thermoforming operations, see **Clements** for example) whereby the use of the recycled material would have reduced the cost of the overall operation while recycling consumer goods.

The reference to **Chavannes** suggested that rather than merely shaping a single film via the use of a vacuum it was known in the manufacture of a bubble wrap type of packaging material to form both sheets of material via an embossing/thermoforming operation and join both sheets together in the unembossed regions to make a finished assembly.

The references to **Matarasso**, **De Luca et al**, **Simhaee**, or **Larson** suggested that it was known to manufacture a laminated packaging material in an uninflated.

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condition and later inflate the same at the site of use in order to reduce shipping costs associated with fully inflated bubble wrap types of materials.

The references to any one of **Ramirez**, **Ramesh**, or **Bekele** all suggested that it was common practice to employ a tie layer between an oxygen barrier like polyester and another layer to be bonded whereby the tie layer facilitated the bonding of the layers together.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 12-15, 21-26, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements.

The reference to Ottaviano '865 suggested that those skilled in the art at the time the invention was made would have incorporated a multilayer film in the formation of an inflated dunnage material. The reference suggested that the multilayer film was formed from three layers wherein the exterior layers 24 were formed of polyethylene and the interior layer 22 was formed of flexible nylon, see column 3, lines 59-62. The reference suggested that one skilled in the art would have formed the multilayer film via a coextrusion operation, see column 3, lines 62-column 4, line 5. the reference suggested that the interior layer of nylon material was provided as an oxygen barrier, see column 3, lines 66-67. the reference suggested that the so formed coextruded film would have been formed into the bubble wrap ® material by feeding one of the so formed films upon

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a vacuum embossing roller 56 where the sheet of material was embossed to form the wrap material as an embossed sheet FE. A second sheet of the material was heated and laminated onto the embossed sheet as a laminating sheet L to form the bubble wrap ®, see Figure 7 and the associated description of the same for a complete discussion of the bubble wrap® formation. The reference failed to expressly state that the coextruded films would have been fed to the embossing and laminating operations in the formation of the bubble wrap ® (but rather employed preformed coextruded films from a roll stock) and the reference employed nylon for the oxygen barrier material of the multilayer film rather than recycled polyester.

Regarding the feeding of extruded films into an embossing and lamination operation for forming bubble wrap ®, the references to either one of Kawakami or Fox suggested that it was known to those skilled in the art at the time the invention was made to employ extruders in line with the embossing and lamination of the films in the manufacture of a dunnage in the form of bubble wrap ®. The applicant is more specifically referred to extruders D₁ and D₂ in Kawakami which were employed to extrude films F₁ and F₂ in the dunnage formation wherein one film was embossed and the other laminated upon the embossed film. The reference to Fox taught extruders 13 and 14 for extruding films 11 and 12, respectively which were fed to a embossing and lamination arrangement for forming bubble wrap ® materials. The applicant is advised that rather than feeding from a roll stock of coextruded material, one skilled in the art at the time the invention was made would have readily ascertained that feeding the materials from an extrusion die would have also provided one with an endless supply of

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the materials in the formation of bubble wrap ® materials. The combination, nonetheless failed to teach that those skilled in the art at the time the invention was made would have incorporated a recycled polyester material in the bubble wrap ® as an oxygen barrier layer in the same.

However, it was known as evidenced by Lewicki et al to provide an oxygen barrier in the manufacture of a bubble wrap and/or dunnage from polyester materials as well as nylon materials (i.e. that polyester would have been an art recognized alternative material for nylon which achieved the same function as the nylon barrier of Ottaviano '865). The reference to Lewicki et al suggested at column 2, lines 28-37 suggested that those skilled in the art would have readily appreciated that nylon or polyester films would have been useful in the manufacture of dunnage by virtue of the fact that the same was air impervious. One would have selected the material based not only on its air permeability but also its abrasion resistance and durability. It certainly would have been within the purview of the ordinary artisan at the time the invention was made to employ polyester as the gas impervious middle layer in Ottaviano '865 as such materials would have been a useful alternative material to the nylon disclosed therein which achieved the same function as the nylon in light of the teachings of Lewicki et al. The combination nonetheless failed to teach that those versed in the art would have selected recycled polyester as the polyester material used for the operation.

The references to any one of Japanese Patent 10-151627, E.P. 483,665, or Clements suggested that it was known in the art of polyester resins to included recycled polyester (and/or post consumed polyester) in the virgin polyester resin used in an

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extrusion operation to form a film of the same (where in some instances the film was subjected to a thermoforming operation as suggested by Clements for example). The ordinary artisan would have been led to employ the recycled polyester (recycled or post consumer PET) as such would have reduced the cost of the overall operation. Each of the references suggested that one would have been fully capable of using the recycled polyester to form a film therefrom via extrusion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ recycled polyester and extrude the same into a film in the operation as suggested by any one of Japanese Patent 10-151627, E.P. 483,665, or Clements (who suggested that recycling PET would have been desirable) in the operation of manufacturing a bubble wrap ® material where it was known that polyester would have been a suitable alternative to nylon for an air impermeable film in the assembly as suggested Lewicki et al and wherein the film layers of the dunnage material would have been extruded in line with the bubble wrap ® formation as suggested by either one of Fox or Kawakami as such would have provided one with an endless supply of the film materials in the extruded and laminated operation of forming the dunnage as suggested by Ottaviano '865.

With regard to claims 13 and 14, the references suggested that the film would have been formed on the vacuum roller and the second film would have been laminated onto the so formed film in the manufacturing operation. Regarding claims 15, the fluid used to fill the bubble wrap ® was clearly air. With regard to claims 21-26, the references to Japanese Patent '627, E.P. '665 and Clements all suggested that those skilled in the art at the time the invention was made would have incorporated the

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polyester in the form of a recycled polyester material. The reference to Japanese Patent '627 expressly extruded a polyester layer from recycled polyester which was 100% post consumer (recycled) polyester material. Clearly, the artisan would have understood that the polyester core layer (which was the oxygen barrier) would have suitably included an oxygen barrier which was 100% recycled polyester. With respect to the specified intrinsic viscosity of the recycled polyester, this is taken to include the conventional ranges of intrinsic viscosity for recycled polyester (which is an intrinsic property of the recycled polyester material as well as the virgin polyester material). Appellant is advised that one skilled in the art would have understood that the specified intrinsic viscosities is nothing more than stating that recycled and/or virgin polyester is present in the polyester layer. Regarding claim 30, the appellant is advised that one skilled in the art would have understood that one film would have been shaped to provide the bubbles and the other film would have been a flat film in the operation as such was clearly envisioned by Ottaviano. Regarding claim 31, note that the reference to Ottaviano suggested the specified thickness for the films used in the manufacture of the bubble wrap® materials, see column 4, lines 5-14, for example.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements further taken with Chavannes '387.

The references as set forth above (Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627,

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E.P. 483,665, or Clements) suggested the overall operation, however there is no mention of embossing both films in the operation wherein the portions of the films which were not shaped on the vacuum roller were assembled together leaving larger air pockets between the films in the finished wrap assembly. However, as an alternative to forming a bubble wrap ® material with a single embossing roller, it was known as evidenced by Chavannes '387 to form the wrap from plural plastic layers which were both embossed and then joined after the embossing operation as evidenced by Figures 5 and 23. the applicant is referred to the above noted figures and the associated description as it relates to the formation of the dunnage from two films both of which were embossed prior to the joining operation. Additionally, it should be noted that such was described in Chavannes '387 as an alternative to single embossing operation on a single embossing roll, see Figures 1-4. certainly, as a function of the desired end product, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mold both films prior to the lamination of the same in the manufacture of the bubble wrap ® as an alternative to formation wherein only a single film was molded and then laminated to an unmolded and unembossed film as suggested by Chavannes '387 in the process of manufacturing a bubble wrap ® material as set forth by the combination of Ottaviano '865, either one of Fox or Kawakami, Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements.

Regarding claim 16, note that both films would have been molded on the vacuum rollers in the manner claimed. Regarding claim 17, the fluid used to fill the bubble wrap

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® was clearly air. Regarding claim 18, note that Chavannes suggested that one skilled in the art would have joined one film to the other in the regions where the unmolded portions laid (i.e. the ground regions of both films).

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements further taken with any one of Matarasso, DeLuca et al, Simhaee, or Larson '306.

The references as set forth above (namely Ottaviano '865 either one of Fox or Kawakami, Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements) suggested the overall operation, however, the final laminated assembly does not require subsequent inflation after formation. The appellant is advised that such a cushioning material was well known at the time the invention was made and that one skilled in the art would have provided the bubble wrap ® material in such conditions because the shipping costs of the finished assembly would have been greatly reduced had one supplied the material in a deflated condition and inflated the same at the site where the material was to be used as dunnage as suggested by any one of Matarasso, DeLuca et al, Simhaee, or Larson '306. each one of Matarasso, DeLuca et al, Simhaee, or Larson '306 suggested that it was known per se to form bubble wrap ® wherein the same was provided in a deflated condition and inflated by the end user at the local where the dunnage was needed. In each the individual pockets and/or bubbles to be inflated were connected together via channels and a central channel was used to inflate all of the chambers in the dunnage. Clearly, one skilled in the art would have desired to

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design the bubble wrap ® for post inflation in light of the savings associated with shipment of the bubble wrap ® to the customer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to design the bubble wrap for post inflation including provision for channels interconnecting the bubbles as well as a central inflation channel as suggested by any one of Matarasso, DeLuca et al, Simhaee, or Larson '306 in the process of making a bubble wrap ® material by the combination of Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements further taken with any one of Ramirez, Ramesh or Bekele .

The references as set forth above (namely Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements) suggested that one skilled in the art at the time the invention was made would have incorporated an oxygen barrier in the film which included a recycled polyester layer, however there is no indication that those versed in the art at the time the invention was made would have incorporated a tie layer between the core oxygen barrier and the heat sealing layers of the film used to make the bubble wrap®. However, those skilled in the art at the time the invention was made would have known to incorporate tie layers between these heat seal layers and the oxygen barrier (the polyester layer) as such was common practice in the art in order to ensure good

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adhesion between the seal layers and the core as evidenced by any one of Ramirez, Ramesh or Bekele. The references to any one of Ramirez (column 4, lines 11-21, column 7, lines 32-42), Ramesh (column 4, lines 26-38, column 14, lines 62-68, column 18, lines 9-44) or Bekele (column 4, lines 14-16, column 7, lines 57-67) suggested that it was known per se to incorporate a tie layer between other layers of a multilayer film including adjacent barrier (oxygen barrier) layers to better adhere the barrier layers to the remaining layers of the assembly. In order to ensure good adhesion of the layers of the multilayer assembly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tie layers of any one of Ramirez, Ramesh or Bekele in the operation of forming a multilayer film where the tie layers were used to join an oxygen barrier film layer to the other layers of the film in the process of making the bubble wrap® as set forth above by the combination of Ottaviano '865 in view of either one of Fox or Kawakami, further taken with Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements.

(10) Response to Argument

the appellant admits that the reference to Ottaviano teaches a three layer film used to make a thermoformed cellular cushioning product having outer polyethylene layers and an inner layer of nylon which is substantially impervious to the passage of gases there through. The appellant also admits that the references to both Fox and Kawakami suggested the in-line extrusion of films for use in the manufacture of a cellular cushioning material. However, the appellant strenuously argues that the references to Pharo and Lewicki et al (while teaching useful film materials for an

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inflatable cushioning material) failed to teach that one skilled in the art would have substituted a polyester material for the nylon material in Ottaviano.

The reference to Pharo will not be addressed herein as the reference has been removed from the prior art rejection previously submitted. It should be noted that the reference to Pharo did disclose the use of polyester as a film material for a cellular packaging material, however the reference did not expressly state that the use of polyester for nylon would have been an art recognized substitution. Regardless, the arguments presented are moot in light of the removal of the reference from the rejection.

Regarding the reference to Lewicki, the appellant argues that the Office action referred to column 2, lines 28-37 of the reference and the appellant is again referred to this portion of the reference where it expressly states:

"The first embodiment of the invention is illustrated in simplified form in FIGS. 1 to 6 of the drawings. The cushioning unit 10 is preferably formed of four laminations. The uppermost sheet 1 is a thermoplastic polymeric film such as polyethylene, polypropylene, polyester, nylon, polyvinyl chloride, polyvinylidene, polyurethane, etc., having a thickness which may range between 0.3 mil to 5 mil or more, depending upon the intended use of the material which, of course, is gas impervious as well as abrasion and wear resistant."

The appellant argues that it is in error to state that the use of polyester for nylon in a cushioning material (which was inflatable and/or inflated like bubble wrap ®) as the reference to Lewicki does not distinguish the properties of polyester from polyethylene, polypropylene, or the other polymers listed. The appellant argues that there is no teaching or suggestion in the reference to Lewicki to substitute the nylon with the polyester material. The appellant is again advised that there is no need to provide an

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express reason of suggestion from the reference. It is well settled that where, as here, two equivalents were known for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious, see In re Fout 213 USPQ 532, In re Siebentritt, 152 USPQ 618.

the appellant is advised that the reference to Lewicki expressly stated that nylon and polyester were alternative materials suitable as air barriers (as well as useful because of their abrasion resistance and wear resistance) in the formation of a bubble wrap ® type of material. Clearly, one skilled in the art would have understood that nylon or polyester would have been suitable as a barrier material in the process of Ottaviano. The appellant argues that there is no preference for using polyester over polyethylene or polypropylene, however the portion referred to above makes it clear that those skilled in the art would have selected the material based upon the desired characteristics one wished in the finished assembly, including the use of material which was an oxygen barrier. As the ordinary artisan would have been expected to use sufficient basic knowledge to apply and combine features in the prior art (see In re Sovish, 226 USPQ 771, In re Bode, 191 USPQ 12, In re Bozek, 163 USPQ 545 and In re Jacoby, 135 USPQ 317), it is believed that one skilled in the art would have been fully capable of selecting polyester as an alternative material to nylon. While the reference to Lewicki does not express which films are more gas impervious than other films, one skilled in the art would have been expected to determine such through routine experimentation and select a suitable film based upon the same. The reference provided a guide as to which film materials would have been suitable, and certainly one skilled in the art would

have been able to select polyester materials for the film as it was noted as an alternative to nylon for the films in an air cushioning product. The appellant argues that there is no prima facie case because there is no reason for substituting polyester for nylon in Ottaviano, however the reference to Lewicki expressly stated the use of polyester as an alternative material to nylon in products similar to those of Ottaviano. The reference to Lewicki nonetheless failed to expressly suggest that one skilled in the art would have utilized post consumed polyester (recycled polyester) in the barrier layer.

The appellant argues regarding the references to any one of Japanese Patent '627, E.P. '665 and Clements that each of these documents disclose the use of recycled polyester in an article of manufacture where Japanese Patent '627 suggested forming an extruded laminated sheet of the material, E.P. '665 suggested formation of films, injection molded product and castings, and Clements suggested crack-proof resilient articles which were produced via thermoforming. However, appellant argues that the Office failed to explain how any of these documents provides motivation to substitute recycled polyester for the nylon film in Ottaviano. The appellant is advised that the references to any one of Japanese Patent '627, E.P. '665 and Clements were cited to show that it was known to incorporate recycled polyester materials in extruded film materials and thermoformed articles wherein the incorporation of the recycled polyester in the finished product reduced consumer and manufacturer waste and reduced the overall cost of the finished product. As such, when utilizing polyester as the internal layer in the product of Ottaviano, as expressly suggested by Lewicki, one skilled in the art would have understood that it would have been desirable to include recycled

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polyester in the layer of material as such was useful in extrusion operations as well as thermoforming operations and the incorporation of the recycled polyester in the polyester layer would have reduced the waste and reduced the cost of manufacturing the final products therefrom as suggested by any one of Japanese Patent '627, E.P. '665 and Clements.

The appellant argues that the use of virgin polyester in the film assembly of Ottaviano would not have been suitable in the claimed operation as the original disclosure states at page 2, lines 12-21 that the incorporation of the recycled polyester in the virgin polyester was necessary in order to reduce the processing temperature of the coextrusion device to render the polyester polymer compatible with the polyolefin polymers being coextruded therewith. The appellant argues therefore that they have solved a problem which was not recognized by the prior art. In this regard, as expressed in the Final Office action, the appellant was advised that the claims presented are not commensurate in scope with appellant's arguments as there is no mention whatsoever regarding the temperature of the coextruded polymeric materials in the claims. While there is mention of the use of polyolefin based materials and the oxygen barrier polymeric material which is defined as including recycled polyester, the appellant is advised that the claims do not make mention of the temperature difference in the coextrusion operation or the melting points of the various polymeric materials. While it might be inherent in the claim that the processing was made easier as a function of the inclusion of recycled polyester (note that the references to any one of Japanese Patent '627, E.P. '665 and Clements suggested that those skilled in the art would have desired

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to utilize recycled polyester because of the reduction in costs and waste), the claims do not draw out this distinction in any way. In fact, the operation at the higher temperatures (which were performed with virgin polyester) is in no way excluded from the claims at hand.

Regardless of whether the claims are commensurate in scope with appellant's argument or not, appellant is advised that the fact that appellant used the recycled polyester for a different purpose does not alter the conclusion that its use in the prior art operation would have been prima facie obvious for the purpose disclosed in the references to any one of Japanese Patent '627, E.P. '665 and Clements, see In re Lintner, 173 USPQ 360, In re Shetty, 195 USPQ 753, In re Hoch, 166 USPQ 406, and In re Wilder, 166 USPQ 545. clearly, in order to reduce post consumed waste and reduce manufacturing costs, it would have been obvious to incorporate recycled polyester with the virgin polyester in the barrier film for the packaging material in light of the teachings of any one of Japanese Patent '627, E.P. '665 and Clements who suggested that incorporation of recycled polyester with the virgin polyester would have provided these benefits in extruded and thermoformed plastic products. The use of polyester in an inflated bubble wrap ® type material was clearly suggested by Lewicki in the operation of Ottaviano. It is therefore believed that a prima facie case has been presented in rejecting the above noted claims.

Regarding the addition of the reference to Chavannes and the rejection of claims 16-18, the appellant does not dispute that the reference to Chavannes suggested as depicted in Figure 3 that it was possible in the manufacture of a bubble wrap ® material

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to form one film while the embodiment depicted in Figure 5 clearly showed that an alternative to the same was to form both films of material in making the bubble wrap ® type material. The appellant is advised that as expressed above, the use of one known means for another would have been obvious without an express suggestion or motivation provided in the reference where such alternatives were recognized as art recognized equivalents for the same intended function (see In re Fout, In re Siebentritt, supra). The appellant does not dispute that the reference suggested the formation of both film materials. It is therefore believed that appellant agrees with the Office interpretation of the reference. The appellant argues that claims 16-18 are patentable for the same reasons that claims 12-15, 21-26, 30 and 31 are patentable, however as expressed above it is earnestly believed that these claims are not patentable for the reasons expressed above. Since claims 12-15, 21-26, 30, and 31 fall, it is believed that claims 16-18 are likewise unpatentable over the prior art of record.

Regarding claims 19, 20, and 29 and the addition of the references to any one of Matarasso, De Luca et al, Simhaee, or Larson, the appellant argues that claims 19, 20 and 29 are patentable for the same reasons that claims 12-15, 21-26, 30 and 31 are and that the inclusion of these references does not resolve the problems associated with the rejection of claims 12-15, 21-26, 30 and 31. the appellant essentially agrees with the Office interpretation of these references and merely is reiterating that these claims are allowable because the independent claim from which they depend is allowable. However as addressed above it is earnestly believed that claims 12-15, 21-26, 30 and 31 are unpatentable over the prior art applied above. Because there is no

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deficiency in the rejection of these claims, it is believed the rejection of claims 19, 20 and 29 should be sustained.

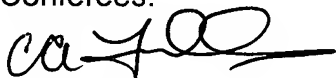
Regarding the rejection of claims 27 and 28 and the inclusion of the references to Ramirez, Ramesh or Bekele, the appellant admits that these reference suggested the incorporation of the material wherein a tie layer would have been present in order to improve adhesion. The appellant argues that claims 27 and 28 are allowable because claims 12-15, 21-26, 30 and 31 are allowable over the prior art and these references do not cure the deficiencies in the basic rejection. The appellant is advised that one skilled in the art would have found it obvious to employ recycled polyester materials as a barrier layer in an inflatable dunnage material for the reasons noted above. As there is not seen to be any deficiency in the rejection of the independent claim and appellant has conceded that the use of the tie layer would have been obvious in light of the teachings of any one of Ramirez, Ramesh or Bekele, the rejection of claims 27 and 28 should be sustained.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeff Aftergut

Conferees:



Chris Fiorilla
SPE Art Unit 1734



Steve Griffin
SPE Art Unit 1731



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